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17  
18 UNITED STATES DISTRICT COURT  
19 DISTRICT OF NEVADA

20 ALTO VENTURES, INC.,

21 Plaintiff,

22 v.

23 CONVERGYS CORP.; FIVE9, INC.;  
TELETECH HOLDINGS, INC.;  
24 TRANSERA COMMUNICATIONS,  
INC.; WEST CORP.; and WSOL, INC.  
25 (d/b/a WORKING SOLUTIONS),

26 Defendants.  
27  
28

CASE NO.: 2:11-cv-01056-PMP-GWF

**DEFENDANT TELETECH HOLDINGS,  
INC.'S ANSWER TO FIRST AMENDED  
COMPLAINT OF ALTO VENTURES, INC.  
AND COUNTERCLAIMS**

1 Defendant TeleTech Holdings, Inc. ("TeleTech") hereby submits its answer to the  
2 allegations set forth in the First Amended Complaint ("Complaint") of Plaintiff Alto Ventures,  
3 Inc. ("Alto Ventures") filed on August 9, 2011.

4 **THE PARTIES**

5 1. TeleTech lacks knowledge and information sufficient to form a belief as to the  
6 truth of the allegations of paragraph 1, and therefore denies those allegations.

7 2. TeleTech lacks knowledge and information sufficient to form a belief as to the  
8 truth of the allegations of paragraph 2 and therefore denies those allegations.

9 3. TeleTech lacks knowledge and information sufficient to form a belief as to the  
10 truth of the allegations of paragraph 3 and therefore denies those allegations.

11 4. TeleTech denies that it is incorporated under the laws of the State of Colorado and  
12 admits that has a regular and established place of business at 9197 South Peoria Street,  
13 Englewood, Colorado 80112. TeleTech admits that its registered agent for service of process is  
14 The Corporation Company, located at 1675 Broadway, Suite 1200, Denver, Colorado 80202. To  
15 the extent the remaining allegations of paragraph 4 call for a legal conclusion, no response is  
16 required. To the extent a response is required, Teletech denies each of the remaining allegations  
17 of paragraph 4.

18 5. TeleTech lacks knowledge and information sufficient to form a belief as to the  
19 truth of the allegations of paragraph 5, and therefore denies those allegations.

20 6. TeleTech lacks knowledge and information sufficient to form a belief as to the  
21 truth of the allegations of paragraph 6, and therefore denies those allegations.

22 7. TeleTech lacks knowledge and information sufficient to form a belief as to the  
23 truth of the allegations of paragraph 7, and therefore denies those allegations.

24 **JURISDICTION AND VENUE**

25 8. TeleTech admits that the Complaint purports to be an action for patent  
26 infringement arising under the patent laws of the United States but denies that Alto Ventures is  
27 entitled to any relief.  
28

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11. To the extent the allegations of paragraph 11 call for a legal conclusion, no response is required. To the extent a response is required, TeleTech denies the allegations of paragraph 11.

19. TeleTech lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 19 and therefore denies those allegations.

**COUNT 1**

20. TeleTech incorporates its responses to the allegations of paragraphs 1 through 19 as if fully set forth herein.

21. TeleTech admits that United State Patent No. 7,418,092 (“the ‘092 patent”), titled “Virtual Call Center,” was issued by the U.S. Patent and Trademark Office on August 26, 2008. TeleTech admits that Exhibit A to the Complaint purports to be a copy of the ‘092 patent. TeleTech lacks knowledge and information sufficient to form a belief as to the remaining allegations of paragraph 21 and therefore denies those allegations.

22. TeleTech lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 22 and therefore denies those allegations.

23. TeleTech lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 23 and therefore denies those allegations.

24. TeleTech denies the allegations of paragraph 24.

25. TeleTech lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 25 and therefore denies those allegations.

26. TeleTech lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 26 and therefore denies those allegations.

27. TeleTech lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 27 and therefore denies those allegations.

28. TeleTech admits that it received notice of the ‘092 patent when it received the Original Complaint. TeleTech lacks knowledge and information sufficient to form a belief as to truth of the allegations of paragraph 28 as they relate to other Defendants and therefore denies those allegations.

29. To the extent the allegations of paragraph 29 call for a legal conclusion, no response is required. To the extent a response is required, TeleTech denies those allegations pertaining to TeleTech. TeleTech lacks knowledge and information sufficient to form a belief as to truth of the allegations of paragraph 29 pertaining to the other Defendants and therefore denies those allegations.

31. TeleTech denies that it infringes any claim of the '092 patent. TeleTech denies that Alto Ventures is entitled to any royalties from TeleTech related to the '092 patent. TeleTech lacks knowledge and information sufficient to form a belief as to truth of the allegations of paragraph 31 as they relate to other Defendants and therefore denies those allegations.

33. To the extent the allegations of paragraph 33 call for a legal conclusion, no response is required. To the extent a response is required, TeleTech denies that it infringes any claim of the '092 patent. TeleTech denies that Alto Ventures has been damaged by any alleged conduct by TeleTech. TeleTech denies that Alto Ventures is entitled to compensation by TeleTech. TeleTech lacks knowledge and information sufficient to form a belief as to truth of the remaining allegations of paragraph 33 and therefore denies those allegations.

Further answering the Complaint, TeleTech asserts the following defenses to Alto Ventures' Complaint. Assertion of a defense is not a concession that TeleTech has the burden of proving the matter asserted. Teletech reserves the right to amend its answer and affirmative defenses as further information is obtained.

Alto Ventures is precluded from recovering on its Complaint because it fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**  
**(Non-Infringement)**

TeleTech does not make, use, sell, offer for sale, or import into the United States, and has not made, used, sold, offered for sale, or imported into the United States, any products or methods that infringe any valid and enforceable asserted claims of the '092 patent.

TeleTech does not and has not infringed, either directly and/or indirectly, literally and/or under the Doctrine of Equivalents, any valid and enforceable claim of the '092 patent.

**THIRD AFFIRMATIVE DEFENSE**  
**(Invalidity)**

Each and every claim of the '092 patent is invalid for failing to meet one or more of the requisite conditions of patentability specified in 35 U.S.C. §§ 101, 102, 103, and 112.

The prior art known before the alleged inventions covered by the '092 patent limits and restricts their scope so that TeleTech does not infringe any valid and/or enforceable claims of the '092 patent.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Laches, Estoppel, Waiver, Implied License, Marking, and Unclean Hands)**

Alto Venture's claims are barred or limited by the equitable doctrine of laches, estoppel, waiver, implied license, marking, and/or unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Prosecution History Estoppel/Disclaimer)**

Alto Ventures is estopped from asserting its infringement claims against TeleTech under the doctrines of prosecution history estoppel and/or prosecution disclaimer.

**SIXTH AFFIRMATIVE DEFENSE**  
**(35 U.S.C. § 287)**

Pursuant to the requirements of 35 U.S.C. § 287, Alto Ventures is not entitled to recover any damages for actions occurring prior to the filing of the Complaint in this action.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Government Sales)**

Plaintiff's claims for damages are limited by 28 U.S.C. § 1498.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(No Injunctive Relief)**

Neither preliminary nor permanent injunctive relief is available to Alto Ventures under the legal standards for injunctions because, among other things, Alto Ventures is not competing with TeleTech and is not practicing the alleged inventions. In addition, the balance of hardships and public interest do not favor an injunction in this case. *See eBay Inc. v. MercExchange, L.L.C.*, 126 S. Ct. 1837 (2006).

**NINTH AFFIRMATIVE DEFENSE**  
**(No Enhanced Damages)**

Alto Ventures has failed to plead and meet the necessary requirements and is therefore not entitled to an enhanced damages award.

**TENTH AFFIRMATIVE DEFENSE**  
**(35 U.S.C. § 288)**

Alto Ventures is precluded from recovering costs under 35 U.S.C. § 288.

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(False Inventorship)**

On information and belief, the '092 patent is unenforceable for failure to identify the true inventors.

**COUNTERCLAIMS**

In addition to its affirmative defenses, TeleTech asserts the following counterclaims against Alto Ventures:

**THE PARTIES**

1. TeleTech Holdings, Inc. ("TeleTech") is a Delaware corporation having its principal place of business at 9197 South Peoria Street, Englewood, Colorado 80112.

2. On information and belief, Alto Ventures, Inc. (“Alto Ventures”) is a Nevada corporation having its principal place of business 2505 Anthem Village, Suite E587, Henderson, Nevada 89052.

### JURISDICTION AND VENUE

3. By virtue of the allegations of Alto Venture’s Amended Complaint and TeleTech’s Answer, an actual controversy exists between TeleTech and Alto Ventures as to whether the claims of U.S. Patent No. 7,418,092 (“the ‘092 patent”) are invalid and not infringed by TeleTech.

4. Alto Ventures claims to be the owner of the entire right, title, and interest in the ‘092 patent.

5. By its counterclaims, TeleTech seeks to obtain a judgment declaring that TeleTech is not infringing and has not infringed the ‘092 patent, and that the ‘092 patent is invalid and unenforceable. TeleTech’s counterclaims arise under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. § 101, et seq. This Court has subject-matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201.

6. Personal jurisdiction and venue are proper in the District of Nevada because Alto Ventures is incorporated under the laws of Nevada and has its principal place of business in this District. Alto Ventures has also submitted itself to the Court’s jurisdiction by filing its Complaint in this Court.

7. Alto Ventures has admitted that venue is proper in this District.

### FIRST COUNTERCLAIM (Declaration of Non-Infringement of the ‘092 Patent)

8. TeleTech incorporates by reference the allegations made in Paragraphs 1-7 of its Counterclaims and paragraphs 1-47 of its Answer as if fully set forth here.

9. Alto Ventures appears to accuse TeleTech’s “products and services including, but not limited to, its ‘Hosted Technology solutions’” of infringing the ‘092 patent. TeleTech does



1 not make, use, sell, offer to sell, or import into the United States any products or services that  
2 infringe the '092 patent.

3 10. TeleTech does not and has not infringed, either directly and/or indirectly, literally  
4 and/or under the Doctrine of Equivalents any valid claim of the '092 patent. TeleTech has neither  
5 contributed to nor induced another party's infringement of any valid or asserted claim of the '092  
6 patent.

7 11. Absent a declaration of non-infringement of any valid and enforceable claim of the  
8 '092 patent, Alto Ventures will continue to assert the '092 patent against TeleTech and will in this  
9 way cause damage to TeleTech.

10 12. Accordingly, TeleTech seeks a declaratory judgment holding that it does not and  
11 has not infringed, either directly, indirectly, contributorily, by inducement, or otherwise, any valid  
12 and enforceable claim of the '092 patent. Such a determination is necessary and appropriate at  
13 this time in order that the parties may ascertain their respective rights and duties.

14 **SECOND COUNTERCLAIM**  
15 **(Declaration of Invalidity of the '092 Patent)**

16 13. TeleTech incorporates by reference the allegations made in Paragraphs 1-12 of its  
17 Counterclaims and paragraphs 1-47 of its Answer as if fully set forth here.

18 14. The claims of the '092 patent, including at least claims 1 and 16, are invalid for  
19 failure to satisfy one or more of the conditions for patentability specified in 35 U.S.C. §§ 101,  
20 102, 103, and 112.

21 15. Absent a declaration of invalidity of the '092 patent, Alto Ventures will continue  
22 to assert these invalid patent claims against TeleTech and will in this way cause damage to  
23 TeleTech.

24 16. Accordingly, TeleTech seeks a declaratory judgment holding that the claims of the  
25 '092 patent are invalid and/or void. Such a determination is necessary and appropriate at this  
26 time in order that the parties may ascertain their respective rights and duties.

**REQUESTED RELIEF**

WHEREFORE, TeleTech prays for judgment with respect to AltoVentures' Complaint and TeleTech's Counterclaims as follows:

(a) That Alto Ventures' Complaint be dismissed with prejudice;

(b) That the Court enter judgment against Alto Ventures and in favor of TeleTech;

(c) That the Court enter a declaratory judgment declaring that TeleTech does not directly or indirectly infringe the '092 patent;

(d) That the Court enter a declaratory judgment declaring the claims of the '092 patent to be invalid and/or void;

(e) That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285;

(f) That the Court award to TeleTech the costs of this action, including reasonable attorneys' fees; and

(g) Any other relief that this Court deems just and proper.

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**JURY DEMAND**

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, Defendant and Counter Claimant TeleTech respectfully requests a jury trial on all issues so triable, including without limitation, Alto Venture's claims and TeleTech's affirmative defenses and Counterclaims.

DATED this 6<sup>th</sup> day of December, 2011.

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**CERTIFICATE OF SERVICE**

Pursuant to Fed.R.Civ.P.5(b), and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that a true and correct copy of the **DEFENDANT TELETECH HOLDINGS, INC.'S ANSWER TO FIRST AMENDED COMPLAINT OF ALTO VENTURES, INC. AND COUNTERCLAIMS** was served via electronic service, via CM/ECF, on this 6<sup>th</sup> day of December, 2011, and to the address(es) shown below:

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18 I further certify that I am familiar with the firm's practice of collection and processing  
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21 postage prepaid, on this 6<sup>th</sup> day of December, 2011, and to the address(es) shown below:

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